

# SENATE NO. 1474

## **AN ACT** RELATIVE TO PENSION DIVESTMENT

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
And by the authority of the same, as follows:*

1   SECTION 1. Legislative Findings

2   (a) On July 23, 2004, the United States Congress declared that “the atrocities unfolding in Darfur,  
3   Sudan, are genocide”;

4   (b) On September 9, 2004, Secretary of State Colin L. Powell told the U.S. Senate Foreign Relations  
5   Committee that “genocide has occurred and may still be occurring in Darfur” and “the Government of  
6   Sudan and the Janjaweed bear responsibility”;

7   (c) On September 21, 2004, addressing the United Nations General Assembly, President George W.  
8   Bush affirmed the Secretary of State's finding and stated, “[A]t this hour, the world is witnessing  
9   terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has  
10   concluded are genocide”;

11   (d) On December 7, 2004, the U.S. Congress noted that the genocidal policy in Darfur has led to  
12   reports of “systematic rape of thousands of women and girls, the abduction of women and children,

13 and the destruction of hundreds of ethnically African villages, including the poisoning of their wells  
14 and the plunder of their crops and cattle upon which the people of such villages sustain themselves”;

15 (e) Also on December 7, 2004, Congress found that “the Government of Sudan has restricted access by  
16 humanitarian and human rights workers to the Darfur area through intimidation by military and  
17 security forces, and through bureaucratic and administrative obstruction, in an attempt to inflict the  
18 most devastating harm on those individuals displaced from their villages and homes without any  
19 means of sustenance or shelter”;

20 (f) On September 25, 2006, Congress reaffirmed that “the genocide unfolding in the Darfur region of  
21 Sudan is characterized by acts of terrorism and atrocities directed against civilians, including mass  
22 murder, rape, and sexual violence committed by the Janjaweed and associated militias with the  
23 complicity and support of the National Congress Party-led faction of the Government of Sudan”;

24 (g) On September 26, 2006, the U.S. House of Representatives stated that “an estimated 300,000 to  
25 400,000 people have been killed by the Government of Sudan and its Janjaweed allies since the  
26 [Darfur] crisis began in 2003, more than 2,000,000 people have been displaced from their homes, and  
27 more than 250,000 people from Darfur remain in refugee camps in Chad”;

28 (h) The Darfur crisis represents the first time the United States Government has labeled ongoing  
29 atrocities a genocide;

30 (i) The Federal Government has imposed sanctions against the Government of Sudan since 1997.  
31 These sanctions are monitored through the U.S. Treasury Department’s Office of Foreign Assets  
32 Control (OFAC);

33 (j) According to a former chair of the U.S. Securities and Exchange Commission, “the fact that a  
34 foreign company is doing material business with a country, government, or entity on OFAC’s  
35 sanctions list is, in the SEC staff’s view, substantially likely to be

36 significant to a reasonable investor’s decision about whether to invest in that company”;

37 (k) Since 1993, the U.S. Secretary of State has determined that Sudan is a country the government of  
38 which has repeatedly provided support for acts of international terrorism, thereby restricting United  
39 States assistance, defense exports and sales, and financial and other transactions with the Government  
40 of Sudan;

41 (l) A 2006 U.S. House of Representatives report states that “a company's association with sponsors of  
42 terrorism and human rights abuses, no matter how large or small, can have a materially adverse result  
43 on a public company's operations, financial condition, earnings, and stock prices, all of which can  
44 negatively affect the value of an investment”;

45 (m) In response to the financial risk posed by investments in companies doing business with a  
46 terrorist-sponsoring state, the Securities and Exchange Commission established its  
47 Office of Global Security Risk to provide for enhanced disclosure of material information regarding  
48 such companies;

49 (n) The current Sudan divestment movement encompasses nearly 100 universities, cities, states, and  
50 private pension plans;

51 (o) Companies facing such widespread divestment present further material risk to remaining investors;

52 (p) It is a fundamental responsibility of the commonwealth to decide where, how, and by whom  
53 financial resources in its control should be invested, taking into account numerous pertinent factors;

54 (q) It is the prerogative and desire of the commonwealth, in respect to investment resources in its  
55 control and to the extent reasonable, with due consideration for, among other things, return on  
56 investment, on behalf of itself and its investment beneficiaries, not to participate in an ownership or  
57 capital-providing capacity with entities that provide significant practical support for genocide,  
58 including certain non-United States companies presently doing business in Sudan;

59 (r) It is the judgment of the General Court that this Act should remain in effect only insofar as it  
60 continues to be consistent with, and does not unduly interfere with, the foreign policy of the United  
61 States as determined by the Federal Government;

62 (s) It is the judgment of this [State Legislature] that mandatory divestment of public funds from certain  
63 companies is a measure that should be employed sparingly and judiciously. A Congressional and  
64 Presidential declaration of genocide satisfies this high threshold.

## 65 Section 2: Definitions

66 As used in this Act, the following definitions shall apply:

67 (a) “Active Business Operations” means all Business Operations that are not Inactive Business  
68 Operations.

69 (b) “Business Operations” means engaging in commerce in any form in Sudan, including by acquiring,  
70 developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities,  
71 personnel, products, services, personal property, real property, or any other apparatus of business or  
72 commerce.

73 (c) “Company” means any sole proprietorship, organization, association, corporation, partnership,  
74 joint venture, limited partnership, limited liability partnership, limited liability company, or other  
75 entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries,  
76 parent companies, or affiliates of such entities or business associations, that exists for profit-making  
77 purposes.

78 (d) “Complicit” means taking actions during any preceding twenty (20) month period which have  
79 directly supported or promoted the genocidal campaign in Darfur, including, but not limited to,  
80 preventing Darfur’s victimized population from communicating with each other, encouraging  
81 Sudanese citizens to speak out against an internationally approved security force for Darfur, actively

82 working to deny, cover up, or alter the record on human rights abuses in Darfur, or other similar  
83 actions.

84 (e) “Direct Holdings” in a Company means all securities of that Company held directly by the Public  
85 Fund or in an account or fund in which the Public Fund owns all shares or interests.

86 (f) “Government of Sudan” means the government in Khartoum, Sudan, which is led by the National  
87 Congress Party (formerly known as the National Islamic Front) or any successor government formed  
88 on or after October 13, 2006 (including the coalition National Unity Government agreed upon in the  
89 Comprehensive Peace Agreement for Sudan) and does not include the regional government of  
90 southern Sudan.

91 (g) “Inactive Business Operations” means the mere continued holding or renewal of rights to property  
92 previously operated for the purpose of generating revenues but not presently deployed for such  
93 purpose.

94 (h) “Indirect Holdings” in a Company means all securities of that Company held in an account or fund,  
95 such as a mutual fund, managed by one or more persons not employed by the Public Fund, in which  
96 the Public Fund owns shares or interests together with other investors not subject to the provisions of  
97 this Act.

98 (i) “Marginalized Populations Of Sudan” include, but are not limited to, the portion of the population  
99 in the Darfur region that has been genocidally victimized; the portion of the population of southern  
100 Sudan victimized by Sudan’s North-South civil war; the Beja, Rashidiya, and other similarly  
101 underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan’s  
102 Abyei, Southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other  
103 similarly underserved groups of northern Sudan.

104 (j) “Military Equipment” means weapons, arms, military supplies, and equipment that readily may be  
105 used for military purposes, including, but not limited to, radar systems or military-grade transport  
106 vehicles; or supplies or services sold or provided directly or indirectly to any force actively  
107 participating in armed conflict in Sudan.

108 (k) “Mineral Extraction Activities” include exploring, extracting, processing, transporting, or  
109 wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including  
110 gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc, as  
111 well as facilitating such activities, including by providing supplies or services in support of such  
112 activities.

113 (l) “Oil-Related Activities” include, but are not limited to, owning rights to oil blocks; exporting,  
114 extracting, producing, refining, processing, exploring for, transporting, selling, or trading of oil;  
115 constructing, maintaining, or operating a pipeline, refinery, or other oil-field infrastructure; and  
116 facilitating such activities, including by providing supplies or services in support of such activities,  
117 provided that the mere retail sale of gasoline and related consumer products shall not be considered  
118 Oil-Related Activities.

119 (m) “Power Production Activities” means any Business Operation that involves a project  
120 commissioned by the National Electricity Corporation (NEC) of Sudan or other similar Government of  
121 Sudan entity whose purpose is to facilitate power generation and delivery, including, but not limited  
122 to, establishing power-generating plants or hydroelectric dams, selling or installing components for the  
123 project, providing service contracts related to the installation or maintenance of the project, as well as  
124 facilitating such activities, including by providing supplies or services in support of such activities.

125 (n) “Public Fund” means Pension Reserves Investment Trust or the Pension Reserves Investment  
126 Management Board in charge of managing the pooled investment fund consisting of the assets of the

127 State Employees' and Teachers' Retirement Systems as well as the assets of local participating and  
128 purchasing retirement systems.

129 (o) "Scrutinized" Company means any Company that meets the criteria in paragraph (1), paragraph  
130 (2), or paragraph (3) below: (1) The Company has Business Operations that involve contracts with  
131 and/or provision of supplies or services to (A) the Government of Sudan, (B) Companies in which the  
132 Government of Sudan has any direct or indirect equity share, (C) Government of Sudan-commissioned  
133 consortiums or projects, or (D) Companies involved in Government of Sudan-commissioned  
134 consortiums or projects; and (i) More than ten percent (10%) of the Company's revenues or assets  
135 linked to Sudan involve Oil-Related Activities or Mineral Extraction Activities; less than seventy-five  
136 percent (75%) of the Company's revenues or assets linked to Sudan involve contracts with and/or  
137 provision of Oil-Related or Mineral Extracting products or services to the regional government of  
138 southern Sudan or a project or consortium created exclusively by that regional government; and the  
139 Company has failed to take Substantial Action; or (ii) More than ten percent (10%) of the Company's  
140 revenues or assets linked to Sudan involve Power Production Activities; less than seventy-five percent  
141 (75%) of the Company's Power Production Activities include projects whose intent is to provide  
142 power or electricity to the Marginalized Populations Of Sudan; and the Company has failed to take  
143 Substantial Action. (2) The Company is Complicit in the Darfur genocide. (3) The Company supplies  
144 Military Equipment within Sudan, unless it clearly shows that the Military Equipment cannot be used  
145 to facilitate offensive military actions in Sudan or the Company implements rigorous and verifiable  
146 safeguards to prevent use of that equipment by forces actively participating in armed conflict, for  
147 example, through post-sale tracking of such equipment by the Company, certification from a reputable  
148 and objective third party that such equipment is not being used by a party participating in armed  
149 conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or

150 any internationally recognized peacekeeping force or humanitarian organization. Notwithstanding  
151 anything herein to the contrary, a Social Development Company which is not Complicit in the Darfur  
152 genocide shall not be considered a Scrutinized Company.

153 (p) “Social Development Company” means a Company whose primary purpose in Sudan is to provide  
154 humanitarian goods or services, including medicine or medical equipment, agricultural supplies or  
155 infrastructure, educational opportunities, journalism-related activities, information or information  
156 materials, spiritual-related activities, services of a purely clerical or reporting nature, food, clothing, or  
157 general consumer goods that are unrelated to Oil-Related Activities, Mineral Extraction Activities, or  
158 Power Production Activities.

159 (q) “Substantial Action” means adopting, publicizing, and implementing a formal plan to cease  
160 Scrutinized Business Operations within one year and to refrain from any such new Business  
161 Operations; undertaking significant humanitarian efforts on behalf of one or more Marginalized  
162 Populations Of Sudan; or through engagement with the Government of Sudan, materially improving  
163 conditions for the genocidally victimized population in Darfur.

### 164 Section 3: Identification of Companies

165 (a) Within 90 days following passage of this Act, the Public Fund shall make its best efforts to identify  
166 all Scrutinized Companies in which the Public Fund has Direct or Indirect Holdings or could possibly  
167 have such holdings in the future. Such efforts shall include, as appropriate: (1) Reviewing and relying,  
168 as appropriate in the Public Fund’s judgment, on publicly available information regarding Companies  
169 with Business Operations in Sudan, including information provided by non-profit organizations,  
170 research firms, international organizations, and government entities; and/or (2) Contacting asset  
171 managers contracted by the Public Fund that invest in Companies with Business Operations in Sudan;  
172 and/or (3) Contacting other institutional investors that have divested from and/or engaged with



173 Companies that have Business Operations in Sudan. (a) By the first meeting of the Public Fund  
174 following the 90-day period described in subsection (b), the Public Fund shall assemble all Scrutinized  
175 Companies identified into a “Scrutinized Companies List.” (c) The Public Fund shall update the  
176 Scrutinized Companies List on a quarterly basis based on evolving information from, among other  
177 sources, those listed in subsection (a).

#### 178 Section 4: Required Actions

179 The Public Fund shall adhere to the following procedure for Companies on the Scrutinized Companies  
180 List:

##### 181 (a) Engagement

182 (1) The Public Fund shall immediately determine the Companies on the Scrutinized Companies List in  
183 which the Public Fund owns Direct or Indirect Holdings.

184 (2) For each Company identified in paragraph (1) with only Inactive Business Operations, the Public  
185 Fund shall send a written notice informing the Company of this Act and encouraging it to continue to  
186 refrain from initiating Active Business Operations in Sudan until it is able to avoid Scrutinized  
187 Business Operations. The Public Fund shall continue such correspondence on a semi-annual basis.

188 (3) For each Company newly identified in paragraph (1) with Active Business Operations, the Public  
189 Fund shall send a written notice informing the Company of its Scrutinized Company status and that it  
190 may become subject to divestment by the Public Fund. The notice shall offer the Company the  
191 opportunity to clarify its Sudan-related activities and shall encourage the Company, within 90 days, to  
192 either cease its Scrutinized Business Operations or convert such operations to Inactive Business  
193 Operations in order to avoid qualifying for divestment by the Public Fund. (4) If, within 90 days  
194 following the Public Fund’s first engagement with a Company pursuant to paragraph (3), that  
195 Company ceases Scrutinized Business Operations, the Company shall be removed from the

196 Scrutinized Companies List and the provisions of this Section shall cease to apply to it unless it  
197 resumes Scrutinized Business Operations. If, within 90 days following the Public Fund's first  
198 engagement, the Company converts its Scrutinized Active Business Operations to Inactive Business  
199 Operations, the Company shall be subject to all provisions relating thereto.

200 (b) Divestment (1) If, after 90 days following the Public Fund's first engagement with a Company  
201 pursuant to subsection (a)(3), the Company continues to have Scrutinized Active Business Operations,  
202 and only while such Company continues to have Scrutinized Active Business Operations, the Public  
203 Fund shall sell, redeem, divest, or withdraw all publicly-traded securities of the Company, except as  
204 provided below, according to the following schedule: (i) At least 50% of such assets shall be removed  
205 from the Public Fund's assets under management by 9 months after the Company's most recent  
206 appearance on the Scrutinized Companies List. (ii) 100% of such assets shall be removed from the  
207 Public Fund's assets under management within 15 months after the Company's most recent  
208 appearance on the Scrutinized Companies List. (2) If a Company that ceased Scrutinized Active  
209 Business Operations following engagement pursuant to subsection (a)(3) resumes such operations,  
210 paragraph (1) shall immediately apply, and the Public Fund shall send a written notice to the  
211 Company. The Company shall also be immediately reintroduced onto the Scrutinized Companies List.

212 (c) Prohibition At no time shall the Public Fund acquire securities of Companies on the Scrutinized  
213 Companies List that have Active Business Operations, except as provided below.

214 (d) Exemption No Company which the United States Government affirmatively declares to be  
215 excluded from its present or any future federal sanctions regime relating to Sudan shall be subject to  
216 divestment or investment prohibition pursuant to subsections (b) and (c).

217 (e) Excluded Securities Notwithstanding anything herein to the contrary, subsections (b) and (c) shall  
218 not apply to Indirect Holdings in actively managed investment funds. The Public Fund shall, however,

219 submit letters to the managers of such investment funds containing Companies with Scrutinized Active  
220 Business Operations requesting that they consider removing such Companies from the fund or create a  
221 similar actively managed fund with Indirect Holdings devoid of such Companies. If the manager  
222 creates a similar fund, the Public Fund shall replace all applicable investments with investments in the  
223 similar fund in an expedited timeframe consistent with prudent investing standards. For the purposes  
224 of this Section, “private equity” funds shall be deemed to be actively managed investment funds.

#### 225 Section 5: Reporting

226 (a) The Public Fund shall file a publicly-available report to the [State Legislature and Attorney  
227 General] that includes the Scrutinized Companies List within 30 days after the list is created.

228 (b) Annually thereafter, the Public Fund shall file a publicly-available report to the [State Legislature  
229 and Attorney General] and send a copy of that report to the United States Presidential Special Envoy  
230 to Sudan (or an appropriate designee or successor) that includes: (1) A summary of correspondence  
231 with Companies engaged by the Public Fund under Sections 4(a)(2) and (a)(3); (2) All investments  
232 sold, redeemed, divested, or withdrawn in compliance with Section 4(b); (3) All prohibited  
233 investments under Section 4(c); and (4) Any progress made under Section 4(e).

#### 234 Section 6: Provisions for Expiration of Act

235 This Act shall expire upon the occurrence of any of the following:

236 (a) The Congress or President of the United States declares that the Darfur genocide has been halted  
237 for at least 12 months; or

238 (b) The United States revokes all sanctions imposed against the Government of Sudan; or

239 (c) The Congress or President of the United States, through legislation or executive order, declares that  
240 mandatory divestment of the type provided for in this Act interferes with the conduct of United States  
241 foreign policy.

242 Section 7: Other Legal Obligations

243 With respect to actions taken in compliance with this Act, including all good faith determinations  
244 regarding Companies as required by this Act, the Public Fund shall be exempt from any conflicting  
245 statutory or common law obligations, including any such obligations in respect to choice of asset  
246 managers, investment funds, or investments for the Public Fund's securities portfolios.

247 Section 8: Reinvestment in Certain Companies with Scrutinized Active Business

248 Operations

249 Notwithstanding anything herein to the contrary, the Public Fund shall be permitted to cease divesting  
250 from certain Scrutinized Companies pursuant to Section 4(b) and/or reinvest in certain Scrutinized  
251 Companies from which it divested pursuant to Section 4(b) if clear and convincing evidence shows  
252 that the value for all assets under management by the Public Fund becomes equal to or less than  
253 99.50% (50 basis points) of the hypothetical value of all assets under management by the Public Fund  
254 assuming no divestment for any company had occurred under Section 4(b). Cessation of divestment,  
255 reinvestment, and/or any subsequent ongoing investment authorized by this section shall be strictly  
256 limited to the minimum steps necessary to avoid the contingency set forth in the preceding sentence.  
257 For any cessation of divestment, reinvestment, and/or subsequent ongoing investment authorized by  
258 this section, the Public Fund shall provide a written report to the attorney general, the senate and house  
259 committees on ways and means and the joint committee on public service in advance of initial  
260 reinvestment, updated semi-annually thereafter as applicable, setting forth the reasons and  
261 justification, supported by clear and convincing evidence, for its decisions to cease divestment,  
262 reinvest, and/or remain invested in Companies with Scrutinized Active Business Operations. This  
263 section has no application to reinvestment in Companies on the ground that they have ceased to have  
264 Scrutinized Active Business Operations.

265 Section 9: Enforcement

266 The Attorney General is charged with enforcing the provisions of this Act and, through any lawful  
267 designee, may bring such actions in court as are necessary to do so.

268 Section 10: Severability

269 If any one or more provision, section, subsection, sentence, clause, phrase, or word of this legislation  
270 or the application thereof to any person or circumstance is found to be invalid, illegal, unenforceable  
271 or unconstitutional, the same is hereby declared to be severable and the balance of this legislation shall  
272 remain effective and functional notwithstanding such invalidity, illegality, unenforceability or  
273 unconstitutionality. The general court hereby declares that it would have passed this legislation, and  
274 each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact  
275 that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared  
276 invalid, illegal, unenforceable or unconstitutional, including, but not limited to, each of the  
277 engagement, divestment, and prohibition provisions of this legislation.